

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration of the California Renewables Portfolio Standard Program.

Rulemaking 08-08-009
(Filed August 21, 2008)

**COMMENTS OF L. JAN REID ON IMPERIAL VALLEY
RENEWABLES DEVELOPMENT AND EVALUATION OF ALL
RENEWABLE PROCUREMENT CONTRACTS**

Pursuant to the February 3, 2009 Assigned Commissioner's Ruling (ACR) of Commission President Michael Peevey and the February 9, 2009 ruling of Administrative Law Judge (ALJ) Anne Simon, I submit these comments on Renewables Portfolio Standard (RPS) development in Imperial Valley and the evaluation of all RPS contracts. Opening comments are due Friday, February 27, 2009. I will file this pleading electronically on the due date.

I. Summary

The ACR states that: (ACR, p. 1.)

In approving the Sunrise Powerlink Transmission Project (Sunrise), the Commission stated that the principal means by which it can ensure that Imperial Valley renewable resources are developed is through the annual renewables portfolio standard (RPS) procurement plan (Plan) filed by each utility. (D.08-12-058, p.261 citing § 399.14(a).) The Commission noted that it expects the approval of Sunrise to prompt proposals from RPS-eligible renewable developers for viable, competitively priced projects in the Imperial Valley in response to each utility's upcoming 2009 RPS solicitation.

The Commission approved the Sunrise Project to be constructed at an estimated maximum cost of \$1.883 billion. (D.08-12-058, slip op. at 274.) In so doing, the Commission fulfilled its governmental responsibility to allow necessary infrastructure to be built. The Commission effectively created the infrastructure so that additional RPS projects can be developed in the Imperial Valley. If there are additional barriers to RPS development in the Imperial Valley, the Commission should address those barriers as they arise. The Commission should not give a preference to RPS developers in the Imperial Valley and thereby discriminate against RPS developers in other parts of California.

The Commission has an obligation to ensure that all California RPS suppliers are treated fairly in the contract evaluation process, not just RPS suppliers in the Imperial Valley. I am concerned that any Commission action which would establish a preference for Imperial Valley RPS suppliers would be found to be unlawful.

Public Utilities Code (P.U. Code) 453 (a) requires that:

No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage.

It is true that both renewables facilities and qualifying facilities (QF) have been granted a preference in utility procurement processes. However, the RPS preference was established by state law and the QF preference was established by federal law.

The Commission also has an obligation to ensure that rates (and thereby utility costs) are just and reasonable. P.U. Code § 451 requires all utility rules, rates, and charges to be just and reasonable. P.U. Code § 454 requires the

Commission to determine whether a rate increase is justified. Although the Commission is not currently considering a rate increase in the instant proceeding, the actions taken by the Commission in this rulemaking may result in a rate increase in the future.

If the Commission establishes a preference for Imperial Valley renewables and the cost of those renewables is less than the cost of renewables from other sources, then it is doubtful whether or not these costs will be found to be just and reasonable. Thus, there is a danger than any system of preferences for Imperial Valley renewables developers will not be consistent with P.U. Code §451 and P.U. Code §454.

II. Recommendations

I have relied on past Commission decisions and the ACR in developing recommendations concerning Imperial Valley renewables development and project viability criteria. I recommend the following:

1. The IOUs should determine whether or not to hold a Special Imperial Valley Bidders Conference. (Section III.A)
2. The Commission should not order the Energy Division to conduct specific monitoring activities of Imperial Valley proposals. (Section III.B)
3. The Commission should reject the proposed remedial measures for 2010 RPS solicitations. (Section III.C)
4. The Commission should not change existing rules regarding contract failure. (Section IV.A)
5. The Commission should not adopt the Staff Proposal on project viability. (Section IV.B)
6. The Commission should order the IOUs to incorporate all of the Staff's criteria into the IOUs shortlisting and contract evaluation process with the exception of RFO Experience, Seller Concentration, and Pricing Structure. (Section IV.B)

My recommendations are based on the following reasoning.

1. The choice of whether or not to hold a special Imperial Valley Bidders Conference is best left to the IOUs. In consultation with the procurement review groups (PRGs), the IOUs are best qualified to determine what outreach activities should be conducted.
2. There is no record evidence to suggest that the IOUs will discriminate against Imperial Valley RPS projects or that the current IOU outreach activities are insufficient.
3. Since Imperial Valley RPS projects will definitely have access to transmission, they will probably be highly rated in the project viability portion of the contract selection process.
4. The remedial proposals are unnecessary, inconsistent with P. U. Code §399.14(c)(B), §451, and §454, and send the wrong message to renewables developers in other parts of the state. If there is future evidence that the IOUs are discriminating against Imperial Valley RPS projects, the Commission can take appropriate action at that time.
5. The Commission has the authority to reject an advice letter and order the IOU to file a formal application.
6. With some exceptions, the Staff Proposal provides a good conceptual framework for analyzing project viability.

III. Imperial Valley RPS Development

The ACR lists three types of proposals (ACR, Attachment A, pp. 1-3.) concerning RPS development in Imperial Valley: a bidder's conference, monitoring, and remedial measures. I discuss each of these measures below.

A. Imperial County Bidders Conference

It has been proposed "that PG&E, SCE, and SDG&E each hold a special bidder's conference in Imperial County before the receipt of bids as part of its 2009 RPS solicitation." (ACR, Attachment A, p. 2.) It is not necessary for the Commission to order the investor owned utilities (IOUs) to conduct a special bidders conference for the benefit of Imperial Valley developers.

It is no secret that all three IOUs are extremely interested in signing up cost-effective renewables projects that meet the least-cost, best fit requirements of P.U. Code §399.14(c)(B). As part of the procurement process, the IOUs have outreach activities. One of the purposes of the IOU's outreach efforts is to maximize the number of bidders in a given solicitation.

There is no record evidence to suggest that the IOUs will discriminate against Imperial Valley RPS projects or that the current IOU outreach activities are insufficient. The choice of whether or not to hold a special Imperial Valley Bidders Conference is best left to the IOUs. In consultation with the procurement review groups (PRGs), the IOUs are best qualified to determine what outreach activities should be conducted.

A special bidders conference may be counter productive and might discourage renewables bidders from other areas from participation in the IOUs' 2009 solicitations. It is possible that other potential bidders might get the impression that a preference will be given to Imperial Valley developers and that renewables projects located in other areas "need not apply."

B. Specific Monitoring of Imperial Valley Proposals

The Commission has stated that: (ACR, Attachment A, p. 2.)

Therefore, it is proposed that Energy Division specifically monitor Imperial Valley RPS project proposals. To help accomplish this, each respondent utility shall separately (a) identify the proposals from the Imperial Valley submitted in response to its 2009 RPS solicitation and (b) identify those that are shortlisted. Each respondent utility shall provide this information (and updates to this information) as requested by Energy Division. Other RPS-obligated LSEs shall also provide information (and updates) on specific RPS projects in the Imperial Valley to the extent requested by Energy Division.

The Commission should not order the Energy Division to conduct specific monitoring activities for the benefit of Imperial Valley renewable developers. It is the job of the Energy Division to monitor IOU solicitations and to ensure that all bidders are treated fairly in the solicitation process. The Energy Division can request specific information on any RPS bid via the discovery process. I note that representatives of the Energy Division participate in the IOUs' PRGs and have almost immediate access to all bid information in an RPS solicitation.

The special monitoring proposal may also be counter productive because it will discourage other bidders and will create the impression that a preference is being given to Imperial Valley RPS developers in IOU solicitations.

It is my understanding that project viability is part of the IOUs contract selection process. One of the major factors in determining project viability is whether or not potential RPS project have access to transmission. Since Imperial Valley RPS projects will definitely have access to transmission, they will probably be highly rated in the project viability portion of the contract selection process.

It is neither necessary nor good public policy for the Energy Division to conduct special monitoring activities for the benefit of Imperial Valley RPS developers. Therefore, the Commission should reject this proposal.

C. Remedial Measures for 2010 Solicitation

The Commission has stated that: (D.08-12-058, slip op. at 267.)

The Ruling [R.08-08-009] shall propose that if Imperial Valley renewable projects are not approved by the Commission as a result of the 2009 RPS solicitations, then the Commission will consider some or all of the following remedial measures for the 2010 RPS solicitation cycle:

- Require utilities to automatically shortlist all Imperial Valley proposals that are received in the solicitation so that the projects receive special consideration,
- Include an Imperial Valley bid evaluation metric in the least cost-best fit methodology to give preference to Imperial Valley resources, and
- Require each utility to conduct a special Imperial Valley RPS solicitation.

Each of these “remedial measures” may be counter productive, give preference to Imperial Valley developers, and discriminate against developers in other areas of the state. The Commission should reject all of these proposals in the instant rulemaking. These proposals are unnecessary, inconsistent with P. U. Code §399.14(c)(B), §451, and §454, and send the wrong message to renewables developers in other parts of the state. If there is future evidence that the IOUs are discriminating against Imperial Valley RPS projects, the Commission can take appropriate action at that time.

The proposals are unnecessary because Imperial Valley RPS projects already have a built-in advantage (access to transmission) in the contract evaluation process. I discuss this advantage in Section II.B above.

The proposals may be counter productive because they create the impression that other RPS developers will not be treated fairly by the Commission. Consequently, Commission enactment of these proposals may actually reduce participation in future RPS solicitations. (See Section II.B above.)

Finally, these proposals constitute a system of preferences for the benefit of Imperial Valley RPS developers. As I explain in Section I, these proposals are inconsistent with state law.

IV. General Renewable Resource Procurement

The ACR identifies four issues (ACR, Attachment A, pp. 4-9.) that generally apply to all RPS procurement. These issues are: changes to rules regarding contract failure; criteria regarding contract viability and failure; changes to rules to ensure viable projects are selected; and changes to rules regarding milestones, credit, collateral, and deposits. I discuss each of these issues below.

A. Changes to Rules Regarding Contract Failure

The Commission should not change existing rules regarding contract failure. The Commission should pay careful attention to the viability of a project before it approves and IOU advice letter. If the Commission believes that more information is required, it can request relevant information from the IOU. The Commission also has the authority to reject an advice letter and order the IOU to file a formal application.

B. Criteria Regarding Contract Viability and Failure

The Staff Proposal does a good job of identifying some of the major causes of project failure. The Staff's analytical criteria are given in Attachment B, p. 7 of the ACR. However, some of the criteria are inadequately defined and others may lead to perverse incentives. For example, the Staff Proposal fails to define a "Major Hurdle". In the absence of such definition, developers may view project viability criteria as arbitrary. This lack of definition will uncertainty to the RPS market and may have the effect of discouraging RPS development.

With some exceptions, the Staff Proposal provides a good conceptual framework for analyzing project viability. However, the Commission should not adopt the Staff Proposal on project viability. I recommend that the Commission order the IOUs to incorporate most of the Staff's criteria into the IOUs

shortlisting and contract evaluation process. Three criteria should not be part of the IOUs shortlisting and contract evaluation process: RFO Experience, Seller Concentration, and Pricing Structure. I discuss each of these criteria below.

The RFO Experience criteria may subject new developers to a waiting period before they are eligible for a contract award. Some new developers may have project development experience, but no RFO experience. Such a developer will receive zero points on the RFO Experience criteria the first time that they submit a bid into an IOU's RPS solicitation. The IOUs will only be able to meet a 33% RPS requirement if the Commission encourages all developers to participate in IOU solicitations. The Commission should not adopt any rules which will limit participation.

The Seller Concentration in RFO criteria would tend to discriminate against Imperial Valley RPS developers since they would receive a score of -1 on this criterion. This criterion is inconsistent with the Commission's desire to encourage RPS development in the Imperial Valley area. If Imperial Valley RPS development is successful, it is likely that IOUs would receive a number of bids in RPS solicitations from this region. I note that under this criterion, all Imperial Valley developers would receive a score of -1.

The Pricing Structure criteria employs a system in which projects receive a rating point if they are indexed to turbine or solar panel prices, and/or an industry standard construction cost index. (ACR, Attachment B, p. 7, footnote 4.) If enacted by the Commission, this criterion would discriminate against long-term fixed price contracts in favor of indexed contracts. Long-term fixed price contracts are one of the major economic benefits of the RPS program. This criterion effectively establishes cost-of-service for unregulated RPS projects.

The Pricing Structure criterion fails to consider the fact that larger firms with a high credit rating may have extremely viable projects. These firms should not be disadvantaged in the contract selection process just because of their size and high credit rating.

V. Conclusion

The Commission should adopt the recommendations of L. Jan Reid for the reasons given herein.

* * *

Dated February 27, 2009, at Santa Cruz, California.

/s/

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VERIFICATION

I, L. Jan Reid, make this verification on my behalf. The statements in the foregoing document are true to the best of my knowledge, except for those matters that are stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Dated February 27, 2009, at Santa Cruz, California.

/s/

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CERTIFICATE OF SERVICE

I certify that I have this day by electronic mail served a true copy of the original attached "Comments Of L. Jan Reid On Imperial Valley Renewables Development and Evaluation of All Renewable Procurement" on all parties of record in this proceeding or their attorneys of record. I will serve a paper copy of the pleading on Commissioner Michael Peevey, and on Administrative Law Judges Burton Mattson and Anne Simon.

Dated February 27, 2009, at Santa Cruz, California.

/s/
L. Jan Reid